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plan or other plan or report required under this subpart.

§ 905.18 What are the criteria for Western's approval of submittals?

(a) *Approval criteria.* Western will approve all plans and reports based upon:

(1) Whether the plan or report satisfactorily addresses the criteria in the regulations in this subpart; and

(2) The reasonableness of the plan or report given the size, type, resource needs, geographic area, and competitive situation of the customer.

(b) *Review of resource choices.* Western will review resource choices using section 114 of EAct and this subpart. Western will disapprove plans and reports if Western deems that they do not meet the reasonableness criteria in paragraph (a)(2) of this section or the provisions of section 114 of EAct.

(c) *Accepting plans and reports under other initiatives.* If a customer or group of customers implements integrated resource planning under a program responding to other Federal, Tribal, or State initiatives, Western will accept and approve the plan or report as long as it substantially complies with the requirements of this subpart.

(d) *Water-based plans and reports.* In evaluating a plan or report, Western will consider water planning, efficiency improvements, and conservation in the same manner it considers energy planning and efficiencies. Customers that provide water utility services and customers that service irrigation load as part of their overall load may include water conservation activities in their plans or reports. To the extent practical, customers should convert reported water savings to energy values.

§ 905.19 How are plans and reports reviewed and approved?

Western will review all plans and reports submitted under this subpart and notify the submitting entity of the plan's or report's acceptability within 120 days after receiving it. If a plan or report submittal is insufficient, Western will provide a notice of deficiencies to the entity that submitted the plan or report. Western, working together with the entity, will determine the time allowable for resubmitting the plan or report. However, the time al-

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lowed for resubmittal will not be greater than 9 months after the disapproval date, unless otherwise provided by applicable contract language.

§ 905.20 When are customers in non-compliance with the regulations in this subpart, and how does Western ensure compliance?

(a) *Good faith effort to comply.* If it appears that a customer's activities may be inconsistent with the applicable IRP, small customer plan, minimum investment report or EE/RE report, Western will notify the customer and offer the customer 30 days to provide evidence of its good faith effort to comply. If the customer does not correct the specified deficiency or submit such evidence, or if Western finds, after receiving information from the customer, that a good faith effort has not been made, Western will impose a penalty.

(b) *Penalties for noncompliance.* Western will impose a penalty on long-term firm power customers for failing to submit or resubmit an acceptable IRP and action plan, small customer plan, minimum investment report or EE/RE report as required by this subpart. Western will also impose a penalty when the customer's activities are not consistent with the applicable plan or report unless Western finds that a good faith effort has been made to comply with the approved plan or report.

(c) *Written notification of penalty.* Western will provide written notice of a penalty to the customer, and to the MBA or IRP cooperative when applicable. The notice will specify the reasons for the penalty.

(d) *Penalty options.* (1) Beginning with the first full billing period following the notice specified in paragraph (c) of this section, Western will impose a surcharge of 10 percent of the monthly power charges until the deficiency specified in the notice is cured, or until 12 months pass. However, Western will not immediately impose a penalty if the customer or its MBA or IRP cooperative requests reconsideration by filing a written appeal under § 905.21.

(2) The surcharge increases to 20 percent for the second 12 months and to 30 percent per year thereafter until the deficiency is cured.

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(3) After the first 12 months of the surcharge and instead of imposing any further surcharge, Western may impose a penalty that would reduce the resource delivered under a customer's long-term firm power contract(s) by 10 percent. Western may impose this resource reduction either:

(i) When it appears to be more effective to ensure customer compliance, or

(ii) When such reduction may be more cost-effective for Western.

(4) The penalty provisions in existing contracts will continue to be in effect and administered and enforced according to applicable contract provisions.

(e) *Assessing and ceasing penalties.* Western will assess the surcharge on the total charges for all power obtained by a customer from Western and will not be limited to surcharges on only firm power sales. When a customer resolves the deficiencies, Western will cease imposing the penalty, beginning with the first full billing period after compliance is achieved.

(f) *Penalties on MBAs and IRP cooperatives.* In situations involving a plan or report submitted by an MBA on behalf of its members where a single member does not comply, Western will impose a penalty upon the MBA on a pro rata basis in proportion to that member's share of the total MBA's power received from Western. In situations involving noncompliance by a participant of an IRP cooperative, Western will impose any applicable penalty directly upon that participant if it has a firm power contract with Western. If the IRP cooperative participant does not have a firm power contract with Western, then Western will impose a penalty upon the participant's MBA on a pro rata basis in proportion to that participant's share of the total MBA's power received from Western.

§ 905.21 What is the administrative appeal process?

(a) *Filing written appeals with Western.* If a customer disagrees with Western's decision on the acceptability of its IRP, small customer plan, minimum investment report or EE/RE report submittal, its compliance with an approved plan or report, or any other compliance issue, the customer may request reconsideration by filing a

written appeal with the appropriate Regional Manager. Customers may submit appeals any time such disagreements occur and should be specific as to the nature of the issue, the reasons for the disagreement, and any other pertinent facts the customer believes should be brought to Western's attention. The Regional Manager will respond within 45 days of receiving the appeal. If resolution is not achieved at the Regional Office level, the customer may appeal to the Administrator, who will respond within 30 days of receiving the appeal.

(b) *Alternative dispute resolution.* Upon request, Western will agree to use mutually agreeable alternative dispute resolution procedures, to the extent allowed by law, to resolve issues or disputes relating to compliance with the regulations in this subpart.

(c) *Penalties during appeal.* Western will not impose a penalty while an appeal process is pending. However, if the appeal is unsuccessful for the customer, Western will impose the penalty retroactively from the date the penalty would have been assessed if an appeal had not been filed.

(d) *Meeting other requirements during appeal process.* A written appeal or use of alternative dispute resolution procedures does not suspend other reporting and compliance requirements.

§ 905.22 How does Western periodically evaluate customer actions?

(a) *Periodic review of customer actions.* Western will periodically evaluate customer actions to determine whether they are consistent with the approved IRP or minimum investment report. Small customer plans and EE/RE reports are not subject to this periodic review.

(b) *Reviewing representative samples of plans and reports.* Western will periodically review a representative sample of IRPs and minimum investment reports, and the customer's implementation of the applicable plan or report from each of Western's Regions. The samples will reflect the diverse characteristics and circumstances of the customers that purchase power from Western. These reviews will be in addition to, and separate and apart from, the review of initial and updated IRPs and